THE HONOURABLE SRI JUSTICE B.SESHSAYANA REDDY

W.P.No. 1894 OF 2000

22nd August, 2005.

Between:-

Sri Rayalaseema Orchards Valley

Pvt.Ltd., Rep.by its Director M.

Ramachandra Reddy R/oNandyal,

Kurnool District …Petitioner

A N D

1. The Chairman, National Waste Land

Development Board Ministry of Rural

Development, New Delhi and Others …Respondents

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ORDER:

1. This writ petition has been filed by Sri Rayalaseema Orchards Valley Private

Limited represented by its Director M. Ramachandra Reddy with a prayer to issue a writ, order or direction more particularly one in the nature of writ of mandamus directing the National Waste Land Development Board, Ministry of Rural Development, New Delhi-1st respondent to release the promotional assistance (subsidy) according to the pre-revised guidelines issued by it.

2. The petitioner company was registered on 23-11-1992 for the purpose of development of waste lands with orchards. The National Waste Land Development Board published a scheme named as Central Sector Scheme i.e. “Investment Promotional Scheme for Development of non-forest waste lands”. The scheme was meant to attract investment for the purpose of developing waste lands. According to the guidelines issued by the Board, the Central Assistance by way of promotional grant/promotion subsidy would be limited to Rs.25,00,000/- or 25% of the total cost of the project as fixed up by the financial institutions and Banks whichever is less. On coming to know about the scheme published by the Board, the shareholders of the petitioner company purchased 180 acres of waste land and transferred to the company for developing into orchards, sapota, papaya etc., The shareholders invested Rs. 36,00,000/- for purchase of land which consists of single plot. The petitioner company submitted a project report for the development of waste land into fertile land to the Andhra Bank, Nandyal Branch, Kurnool seeking financial assistance for the project. The Andhra Bank, Nandyal Branch, having satisfied the viability of the project submitted the scheme for refinancing to the National Bank for Agricultural Rural Development-4th respondent. The total cost of the project is about 1 crore and the promoters contribution was Rs.65,50,000/- including the land costs. At the time of evaluating the scheme by the Bank, the subsidy of 25 lakhs to be given by the Board was taken into consideration. In April, 1997 the project was approved by the Andhra Bank, Nandyal Branch, and National Bank for Agricultural Rural Development-respondents No. 3 and 4. The petitioner company submitted application first on 24-4-1997 for release of subsidy enclosing the project report. The Andhra Bank, Nandyal branch sanctioned loan and the petitioner company started various work like farm house, residential quarters for labour etc., The petitioner company utilized the loan to the extent of 29 lakhs only. The petitioner company authorized the Andhra Bank, Nandyal branch, to collect entire subsidy from the board and credit it towards loan account. Accordingly, the Andhra Bank by its letter dated 18-12-1998 requested the Board to release the eligible subsidy of Rs. 25

lakhs. The Board informed the bank under letter dated 10-6-1999 that the revised guidelines were issued in the month of August, 1998. The original scheme includes the cost of farm house, workers quarters, cattle shed, vehicles, tractors and administrative expenses, but these items were excluded in the new guidelines. The Board assessed the total costs of the project at Rs.14 lakhs for the purpose of subsidy. Accordingly the eligible subsidy has been assessed at 3.5 lakhs only. The grievance of the petitioner company is that the Board ought to have considered and released the subsidy under the old guidelines and therefore, the action of the Board returning the proposal with a direction to resubmit the proposal under the revised guidelines is arbitrary and illegal.

3. The respondents 1 and 2 filed counter affidavit. One S.C.Sen, Deputy Secretary in the Ministry of Rural Development Department of the Land resources, has sworn to the counter affidavit. It is stated in the counter affidavit that the project submitted by the petitioner's company -promoter on 24-4-1997, was not as per the form of old guidelines of the scheme. The loan sanction letter issued by the Bank does not include/indicate/mention any clause about the central subsidy. The petitioner proposal has not been sanctioned by the sanctioning authority and the petitioner company has to submit the application in conformity with the revised guidelines for sanction of subsidy under the scheme. I deem it appropriate to refer para 9 of the counter affidavit and it is thus:

> *"With reference to para 7 it is submitted that the petitioner had submitted the project on 26th May, 1997 under the old guidelines of Investment Promotional Scheme. The said project was not even prepared and submitted as per the provisions of the old Guidelines. The project cost had not been taken into consideration the Central subsidy while the total cost was firmed up by the Bank after appraisal of techno-economic feasibility of the project. The total cost sanctioned by the Andhra Bank was Rs.64.77 lakhs, which includes bank loan of Rs.44.50 lakhs and margin/promoters contribution of Rs.20.27 lakhs. The petitioner company was communicated vide letter No.4-13/97-TE(IPS) dated 18-9-1997 as follows:*
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> *'In this connection, I am to inform you that the scheme under which the project has been submitted is being restructured. As soon as the same is finalized, appropriate action will be taken and will be intimated to you accordingly.*
>
> *'The Scheme was restructured and revised Guidelines were*

issued in August, 1998. Subsequently, a letter was addressed to the petitioner vide letter NO. 4-15/98-TE dated 20-8-1998 with a request to submit fresh proposal as per revised Guidelines in proforma. Thereafter, the petitioner submitted the proposal vide its letter dated 18-12-1998 throughAndhra Bank which forwarded it to this Department vide its letter dated 18-12-1998. The Bank also mentioned that NABARD had appraised the Project. However, the revised proposal so submitted did not conform to the provisions of the revised Guidelines of the Scheme. Hence, the Andhra Bank was asked vide this Department's letter dated 10-6-1999, a copy of which was endorsed to the Petitioner to appraise the above project as per the provisions of the Guidelines of the Scheme and resubmit the project proposal for further consideration to this Department. The revised project was never received in this Department. The reason that the Bank had already disbursed the loan to promoter, as per their original terms, does not automatically entitle the project for sanction under the new Guidelines".

4. The petitioner company filed WPMP No. 2404 of 2000 for seeking direction to the Board to release the admitted subsidy of 3.5 lakhs. This Court by order dated 8-12-2000 directed the Board to release the admitted subsidy of 3.5 lakhs. The respondents 1 and 2 herein carried the matter in appeal being Writ Appeal No. 124 of 2001 which came to be allowed on 25-2-2001. The relevant portion of the order passed in W.A. needs to be noted and it is thus:

"*Without going into the merit of the matter as to whether the new scheme or the old scheme is in the instant case applicable, we are of the opinion that by reason of the interlocutory order the learned single Judge has granted the entire relief, as prayed for by the petitioner in the writ application, which could not have been done having regard to the fact that the entitlement of the subsidy will be scrutinized upon application of the procedures laid down thereof by the appellants-Board."*

5. Heard Sri E.Ayyapu Reddy, learned senior counsel appearing for the writ petitioner and Sri A.Rajasekhar Reddy, learned Assistant Solicitor General appearing for respondents No. 1and 2.

6. The learned counsel appearing for the petitioner submits that the petitioner company on coming to know about the scheme published by the Board has taken up the project of development of waste lands with orchards Valley and approached the Andhra Bank, Nandyal for financial assistance and thereupon the Andhra Bank scrutinized the project and, after satisfying the viability of the project, sanctioned various financial limits. He further submits that the Board having issued guidelines is bound to consider the application of the petitioner company for sanction of the subsidy under the scheme existing as on the date of the commencement of the project. He would further contend the action of the Board in notifying the scheme amounts to promissory estoppel. Since the petitioner company has taken up the project on noticing the scheme published by the board, it is entitled for subsisdy in accordance with the old guidelines and not as per the new guidelines which came into operation from 1st August, 1998. In elaborating his arguments he refers to the old guidelines as well as new guidelines issued by the Board. It appears as per the revised guidelines certain expenditure incurred towards form house, workers shed, cattle shed, vehicles and administrative expenses are deleted while assessing the costs of the project.

7. The learned Assistant Solicitor General appearing on behalf of the respondents 1 and 2 submits that mere submitting the application by the petitioner company under the old or revised guidelines does not automatically entitles to grant of subsidy. He would further submit that proposal submitted by the petitioner company has to be screened by the committee and then only it is entitled for subsidy. He refers the letter dated 10-6-1999 addressed to the Andhra Bank, Nandyal Branch by the Board, where under the petitioner company was advised to appraise the project as per the revised guidelines of the scheme and resubmit the proposal for further consideration of the subsidy. The letter addressed by the Board to the Branch Manager Andhra Bank, Nandyal reads as follows:

> "*Please refer to your letter No. 379/19/653 dated 18th December, 1998 forwarding therewith the paplication of M/s Sree Rayalseema Orchards Valley Pvt. Ltd. Panyam, Nandyal, Andhra Pradesh for central promotional subsidy under investment Promotional Scheme (IPS) of Department of Land Resources.*

'As you are aware, Investment Promotional Scheme has been restructured and the revised guidelines were issued in the month of August, 1998. The Bank loan to the above project was sanctioned during nov. 1996. The revised proposal submitted by Shri Rayaseema Orchards Valley Pvt. Ltd., do not conform to the provision of revised guidelines of the Scheme. As per the revised guidelines, though there is no ceiling limit on the total project cost, however, for the purpose of subsidy, the overall unit cost for on farm development activities is to be restricted upto Rs.20,000/- per ha. The unit cost for the above project is much higher i.e. Rs.0925 lakhs per ha. The subsidy is sanctioned for only agro-forestry projects and also only for on farm development activities. Whereas, the project includes non-eligible components i.e. farm house, workers quarters, cattle shed, vehicles, tractors and administrative expenses etc. These items are not permissible under the new guidelines.

'For the purpose of subsidy, total cost of project for 70ha, works out to Rs.14.00 lakhs only and the total subsidy at the rate of 25% of project cost would be Rs.3.5 lakhs only. In view of the above, I would request you to appraise the above project as per the provision of the guidelines of the Scheme and resubmit the project proposal for further consideration of subsidy under the Scheme."

8. The learned senior counsel appearing for the petitioner strenuously contended that the Board by notifying the scheme made the petitioner company to invest huge amounts and therefore, the Board cannot refuse to sanction subsidy in accordance with the guidelines in force as on the date of the commencement of the project.

9. Let me first consider the old guidelines issued by the Board. As per the old guidelines the proposal for assistance under the scheme has to be scrutinized and sanctioned by a committee consisting of the Joint Secretary, Financial Advisor, Director incharge of the scheme, senior representative of the financial institution/bank, Secretary head of Nodal Department for waste land in which the project is proposed to be implemented and Chairman or Additional Secretary of the department of waste land.

10. On plane reading of the old guidelines, their cannot be any difficulty to conclude that mere sending the proposal to the Board for assistance does not entitle the promoter for subsisdy. A committee has to screen the proposal sent by the promoter under the scheme.

11. Since much emphasis has been laid by the learned senior counsel appearing for the petitioner that not considering the proposal sent by the petitioner company for subsidy amounts to promissory estoppel, the loan sanction letter needs to be noted. It is nowhere stated in the loan sanction letter issued by the Andhra Bank Nandyal Branch-3rd respondent that the Board agreed for grant of 25% of the project cost as subsidy. It is only after commencement of the project the petitioners company submitted proposal to the Board for release of the subsidy under letter dated 26-5-1997. The Board promptly replied to the petitioner company that the proposal in question has been formulated on the basis of the old guidelines of the IPS and the old scheme was discontinued during 1996-97. The letter dated 20th August, 1998 addressed to the petitioner company reads as follows:

> "*Please refer to your letter No. ……..dated 26/5/1997 regarding your project proposal submitted to this Department seeking sanction of central promotional subsidy from this Department of Waste lands Development.*
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> *'Your proposal in question had been formulated on the basis of old guidelines of IPS and the old scheme was discontinued during 1996-97.*
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> *Now that the same IPS has been revived from 1-8-1998 with new revised Guidelines and hereafter the projects will be sanctioned only on the basis of this revised Guidelines (copy enclosed).*
>
> *Therefore, your proposal referred to above could not be considered for the sanction of subsidy in this Department.*
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> *In view of above, it is requested to kindly approach your Financial institution/Bank for according revised sanction in the light of the revised Guidelines and thereafter you may submit a fresh proposal to this Dept. in the proforma at Annexure-I or Annexure-II, as the case may be, for further consideration regarding sanction of subsidy by the Dept. Your proposal in future will be considered only if the project had not been taken up for implementation at field level, so far.*
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> *It is regretted for the inconvenience caused."*

12. It appears the Andhra Bank forwarded the proposal of the petitioner company through its letter dated 18th December, 1998 i.e. after commencement of the new

guidelines. It is apparent from the record that the subsidy component under old guidelines has not been taken into account when the Andhra Bank-3rd respondent has sanctioned various limits to the petitioner company. It was only after commencement of the project, the petitioners' company submitted an application for release of subsidy. The Board informed the petitioner company that the proposal for grant of subsidy under the old scheme was discontinued during 1996-97. Thereafter the petitioner company submitted application in December, 1998 which came to be forwarded to the Board by the Andhra Bank, Nandyal-3rd respondent. Therefore, the application of the petitioner company for grant of subsidy came to be forwarded to the Board under revised guidelines and not under the old guidelines. I, find it difficult to accede to the contention of the learned senior counsel for the petitioner that the proposal sent by the petitioner company for sanction of the subsidy was to be considered under the pre-revised guidelines of the scheme.

13. Since, the Board has already instructed the Andhra Bank, Nandyal Branch to submit project proposal for further consideration of subsidy under the revised scheme, it is for the petitioner company to resubmit the project proposal for further consideration for subsidy.

14. Accordingly, the writ petition is disposed of giving liberty to the petitioner-company to resubmit the project proposal as suggested by the Board and thereupon the Board has to take appropriate decision within eight weeks thereon and communicate the same to the petitioner-company. No costs.

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B.Seshasayana Reddy,J.

22nd August, 2005.

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THE HONOURABLE SRI JUSTICE B.SESHSAYANA REDDY

W.P.No. 1894 OF 2000

19th August, 2005.